IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents,

and

CHARLES F. GIAMPA,

Real Party in Interest.

FILED
November 13, 2007
Janette M. Bloom
Clerk of Supreme Curt
No. 50370

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original proper person petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to disqualify a district court judge.

This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an

arbitrary or capricious exercise of discretion.[1] A writ of prohibition may be issued to compel a district court to cease performing acts beyond its legal authority.[2] Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.[3] Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.[4]

A petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge,[5] and disqualification is appropriate when a judge's impartiality might reasonably be questioned.[6] But the party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient. [7] Moreover, a judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight.[8] Here, petition has not articulated any grounds for disqualification, except that the district judge ruled against her on some issues. This is insufficient

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[1] NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).
[2] NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).
[3] NRS 34.170; NRS 34.330.
[4] Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).
[5] City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).
[6] PETA v. Bobby Berosini, ltd., 111 Nev. 431, 894 P.2d 337 (1995).
[7] Id.
[8] Id.

to warrant disqualification.[9] Accordingly, we deny the petition.

It is so ORDERED.[10]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Victoria Margaret Giampa
Smith Larsen & Wixom
Eighth District Court Clerk

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[9] Id.

[10] Since the petition has been filed, we deny petitioner's October 18, 2007 motion for leave to file the petition as moot.